

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

January 13, 1997

UNITED STATES OF AMERICA	)	
Complainant,	)	8 U.S.C. § 1324a Proceeding
	)	
vs.	)	OCAHO Case No. 95A00124
	)	
CHUMS CORP.	)	
Respondent.	)	

ORDER OF DISMISSAL

PROCEDURAL HISTORY

This is an action arising under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a (INA), in which the United States Department of Justice, Immigration and Naturalization Service (INS) is the complainant and CHUMS Corp., a New York corporation, is the respondent. The INS filed a complaint in three counts against the respondent. Count I alleged that CHUMS knowingly hired or continued to employ three named aliens not authorized for employment in the United States. Count II alleged that CHUMS hired eleven named individuals for whom it failed to properly complete Section 2 of the Employment Eligibility Verification Form (Form I-9) and failed to ensure that the individuals properly completed Section 1. In Count III, it was alleged that respondent hired two named individuals for whom it failed to properly complete Section 2 of the Form I-9.

After some initial difficulties effecting service, the Complaint, Notice of Hearing, Notice of Reassignment,<sup>1</sup> and a copy of the applicable Rules of Practice and Procedure,<sup>2</sup> were personally delivered to the owner of CHUMS Corp. by INS Special Agent Richard Gallagher on November 2, 1995. Respondent, proceeding pro se, answered by letter pleading filed on November 22, 1995. In its answer, respondent asserted that it did not hire or continue to employ the individuals listed in Count I of the Complaint with the knowledge that they were unauthorized to work in the United States. Respondent did not, however, deny the allegations listed in Counts II and III of the Complaint.

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<sup>1</sup> This case was initially assigned to Administrative Law Judge (ALJ) Morse. It was reassigned to me on October 2, 1995.

<sup>2</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1996).

On February 8, 1996, complainant filed a Motion for Judgment on the Pleadings. On March 5, 1996, I issued an Order Granting in Part, and Denying in Part, Complainant's Motion for Judgment on the Pleadings. The Order found in favor of complainant on Counts II and III, but made no findings with respect to Count I, and found further that exculpatory assertions made by CHUMS in its letter pleading were sufficient to challenge the penalty amount requested by complainant. On two occasions thereafter during the pendency of this case, my Legal Technician called the president of respondent corporation, Ms. Eom, in an effort to schedule a prehearing conference. On both occasions, Ms. Eom requested that, due to her limited capacity to communicate in English, a designated representative be permitted to call back. However, follow-up efforts were simply unavailing. On September 10, 1996, counsel for the complainant filed a Status Update, noting that on April 23, 1996, the parties in this matter had agreed to reach a settlement, but that respondent had failed to sign and return the settlement agreement.

On December 9, 1996, complainant renewed its Motion for Judgment on the Pleadings, noting that on September 25, 1996, Ms. Eom, the president of CHUMS, agreed telephonically to pay the civil monetary penalty, but that the complainant was later informed, on November 11, 1996, that Ms. Eom had sold the business and was no longer there, and that the name of the business had changed. No response was made to this motion. No information has been supplied to this office by respondent regarding the sale or name change of its business.

On December 17, 1996, therefore I issued an Order to Show Cause requesting respondent to show cause within 10 days why its request for a hearing should not be dismissed. No response to this order has been received.<sup>3</sup>

## DISCUSSION

OCAHO rules provide that a party shall be deemed to have abandoned a request for a hearing if the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b)(1). This provision was added to the OCAHO rules pursuant to a 1991 revision. The preamble to this revision notes that the purpose of the then newly-added provision was to "allow[ ] an Administrative Law Judge more authority to dismiss a case" where a party has "for whatever reason, seemingly abandoned" its request. 56 Fed. Reg. 50049, 50051 (1991). Dismissal of the instant case would be consistent with such a purpose. OCAHO case law, moreover, provides ample authority confirming that an order of dismissal is the appropriate result where a party files a request for hearing but then fails to participate in its own defense. See United States v. Hotel Valet, Inc., 6 OCAHO 849, at 3 (1996), United States v. Jaque, 6 OCAHO 823, at 6 (1995), United States v. Columbia Sportswear Mfrs., Inc., 5 OCAHO 808, at 3-4 (1995), United States v. M.C.S.M., Inc., 3 OCAHO 544, at 3 (1993).

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<sup>3</sup> The Order of Inquiry was sent to respondent's last known address both by certified and regular mail. Both envelopes were returned to this office marked "Returned to Sender."

Respondent in the instant case has failed to take any action, beyond submitting its answer, to defend in this matter. Respondent has had ample opportunity to do so. According to complainant's attorney, the president of respondent corporation, Mira Eom, has been repeatedly contacted by complainant regarding the possibility of settlement, yet has failed to follow through, in spite of her stated desire to settle the matter. This office has itself contacted Ms. Eom on two occasions in order to schedule a pre-hearing conference, yet was unable to do so due to Ms. Eom's failure to follow through on her own assurances that she or a representative would respond to our phone inquiries. Dismissal is the appropriate result in this case. Accordingly, I find and conclude that respondent has abandoned its request for a hearing.

#### FINDINGS, CONCLUSIONS, AND ORDER

1. At all times relevant to the Complaint, CHUMS, Corp., a New York Corporation, did business at 45-15 Queens Street, 3rd floor, Long Island City, New York 11101.
2. A Notice of Intent to Fine (NIF) was served on the respondent on June 1, 1995, and respondent made a timely request for hearing.
3. Respondent subsequently abandoned its request for hearing and waived its right to appear and contest the allegations of the complaint.
4. The case is therefore dismissed. The Notice of Intent to Fine dated May 12, 1995 in file Number NYC 94-EO-000334 assessing a fine of \$8080.00 is in effect the same as if the request for hearing had never been filed.

SO ORDERED.

Dated and entered this 13th day of January, 1997.

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Ellen K. Thomas  
Administrative Law Judge

#### Appeal Information

This Order shall become the final order of the Attorney General unless, within 30 days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to respondent, in accordance with the provisions of 8 U.S.C. §§ 1324a(e)(7) and (8), and 28 C.F.R. § 68.53.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1997, I have served copies of the foregoing Order of Dismissal to the following persons at the addresses indicated.

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Associate General Counsel  
Immigration and Naturalization Service  
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CHUMS Corp.  
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